

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO JOSEPH BARDO,

Petitioner,

v.

KEN CLARK, Warden,

Respondent.

Case No. 19-00759 BLF (PR)

**ORDER SETTING BRIEFING ON
RESPONDENT'S MOTION TO
DISMISS FIRST AMENDED
PETITION; DENYING OTHER
MOTION AS MOOT**

(Docket No. 48)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the assistance of counsel. On October 28, 2019, the Court granted Petitioner's motion to dismiss counsel of record and reopened the matter to permit Petitioner an opportunity to file an opposition to Respondent's motion to dismiss the petition for failure to exhaust state court remedies. Dkt. Nos. 20, 23. On October 13, 2020, Petitioner filed a first amended petition which contains two claims. Dkt. No. 46. Although Petitioner did not include a motion for leave to file an amended petition, the Court construed the filing of the amended petition as a motion for leave to do so, and set briefing on the matter. Dkt. No. 47.

In lieu of an opposition, Respondent has filed a motion to dismiss the petition as untimely as to both claims and for failure to exhaust state court remedies as to claim II.

1 Dkt. No. 49. Accordingly, the first amended petition is deemed to be operative petition in
2 this matter. Briefing shall proceed on Respondent's motion to dismiss as set forth below.

3 Petitioner shall file an opposition to Respondent's motion to dismiss **no later than**
4 **twenty-eight (28) days** from the date this order is filed.


5 Respondent's reply shall be filed **no later than fourteen (14) days** from the date
6 Petitioner's opposition is filed.

7 Petitioner's motion for an extension of time to file a motion for leave to file an
8 amended petition is **DENIED** as moot. Dkt. No. 48.

9 This order terminates Docket No. 48.

10 **IT IS SO ORDERED.**

11 Dated: December 14, 2020


BETH LABSON FREEMAN
United States District Judge